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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,583	12/21/2001	Subraman Rao Cherukuri	24734	2492
20551	7590	07/25/2006	EXAMINER	
THORPE NORTH & WESTERN, LLP. 8180 SOUTH 700 EAST, SUITE 200 SANDY, UT 84070			HOFFMAN, SUSAN C	
			ART UNIT	PAPER NUMBER
			1655	
DATE MAILED: 07/25/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/024,583

Applicant(s)

CHERUKURI ET AL.

Examiner

Susan Coe Hoffman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 3-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

1. The amendment filed May 11, 2006, has been received and entered. The text of those sections of Title 35, U.S. Code, not included in this action can be found in a prior Office action.
2. Claims 1 and 3-15 are pending.
3. In the paper dated January 29, 2003, applicant elected with traverse hydrogenated starch hydrolysate and lactitol for species A, partially hydrogenated soybean oil for species B, lecithin for species C, dietary fibers for species D, carrageenan for species E, hydroxypropylmethyl cellulose for species F, and psyllium for species G.
4. The declaration of S. Rao Cherukuri has been considered.

***Claim Rejections - 35 USC § 112***

5. Claims 1 and 3-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 is indefinite because it is unclear if the active agent is a required element of the claim. Confusion arises because the claim includes the limitations regarding the active agent after the claim states that elements are optional.

***Claim Rejections - 35 USC § 102***

6. Claims 1, 3-7, and 10-15 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. No. 5,342,631 for the reasons set forth in the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that the reference does not anticipate the

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stated claims because the reference does not teach a reheatable composition. However, since the reference composition teaches the same ingredients as claimed in the same amounts as claimed, the reference composition would inherently have to have the same reheatable characteristic if applicant's composition functions as claimed. In addition, applicant relies on the declaration of Mr. Cherukuri to support the argument that the limitation of "reheatable" distinguishes the claimed composition from the prior art. However, Mr. Cherukuri's declaration does not compare the claimed composition to the reference composition. The declaration compares the claimed composition to compositions that do not appear to be the same as the composition taught by the reference. Thus, the declaration does not compare the claimed product with the reference product. Therefore, the declaration does not establish a patentable difference between the reference composition and the claimed composition.

***Claim Rejections - 35 USC § 103***

7. Claims 1 and 3-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 5,342,631 in view of US Pat. No. 4,824,681 for the reasons set forth in the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that the combination of the references does not teach a reheatable composition. However, as discussed above, since US '631 teaches a composition that contains the same ingredients as claimed, the composition of US '631 would inherently have the same characteristics as claimed. The addition of the ingredients taught by US '681 would not alter this characteristic because the basic composition is anticipated by US '631.

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8. No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

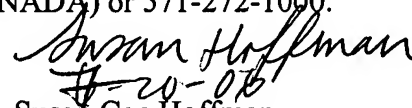
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe Hoffman whose telephone number is (571) 272-0963. The examiner can normally be reached on Monday-Thursday, 9:30-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on (571) 272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
#20-06  
Susan Coe Hoffman  
Primary Examiner  
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